

REMARKS/ARGUMENTS

Reconsideration and allowance of the present application based on the following remarks are respectfully requested. Claims 11 and 19 have been amended. Support for the amendments may be found throughout the specification. No new matter has been added as a consequence of these amendments.

Claims 1-9, 11 and 13-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over WO 2000/071623 ("Kessell '623") and Cosmetic and Toiletry Formulations 2001, 2nd edition ("Flick"). For at least the following reasons, the claims are believed to be patentable over the cited reference.

The Examiner acknowledges, on pages 6-7 of the pending Final Official Action, that Kessel '623 fails to teach:

- 1) "a composition that consists of metal oxide, siloxane fluid and dispersing agent of claim 1;"
- 2) "a dispersing agent which is a mixture of polysiloxane molecules has a molecular weight [number average] in the range from 4000 to 15000 and [having] a number of carboxyl groups per molecule (0.1 to 3 or 0.8 to 2.5) or the number of non-carboxyl group containing monomer units (40 to 150:1) or from 30 to 200 of instant claims;" and that
- 3) the mixture of polysiloxane molecules having "a viscosity in the range from 0.2 to 10 Pa.s.; [f]or the polysiloxane."

In view of the above-noted failures of Kessel '623, the Examiner relies on Flick, seemingly just because it contains a component, *i.e.*, Monasil PCA, that is included in the examples of the pending application.

However, Applicants submit that Flick is directed to an "After Sun Soother with Aloe Vera" composition, not a polysiloxane dispersion, but rather *an aqueous formulation* comprising greater than 86% water and less than 1% metal oxide particles, that happens to also contain Monasil PCA. So, the asserted rejection essentially tries to combine a component from an *after sun*, low particle concentration, aqueous dispersion (Flick) with the high particle concentration (e.g., >30wt.%), polysiloxane dispersion of Kessel '623. In fact, it seems as though the reliance on Flick to cure the above-noted deficiencies of Kessel '623 was merely the

result of searching for Monasil PCA simply because it was included in some of the examples of the pending application. Therefore, in summary, as the pending rejection fails to provide the necessary motivation to combine that would lead a skilled artisan to combine, Applicants submit that the pending rejection fails to provide a *prima facie* case of obviousness.

Moreover, in view of the above, it appears that the pending rejection, using the present application as a guide, amounts to nothing more than an impermissible hindsight reconstruction. Accordingly, Applicants request withdrawal of the present rejection and the issuance of a Notice that the present application is in a condition for allowance.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

JONES DAY

By:


Paul L. Sharer
Registration No. 36,004
Direct No. (202) 879-5481

Intellectual Property Group
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939 Telephone
(202) 626-1700 Facsimile

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